Confidence Management Systems *and* 1199 SEIU United Healthcare Workers East. Case 22–CA–269243

May 6, 2021

DECISION AND ORDER

BY MEMBERS KAPLAN, EMANUEL, AND RING

The Acting General Counsel seeks a default judgment in this case on the ground that Confidence Management Systems (the Respondent) has failed to file an answer to the complaint. Upon a charge filed by 1199 SEIU United Healthcare Workers East (the Union) on November 20, 2020, the Acting General Counsel issued a complaint and notice of hearing against the Respondent on February 10, 2021, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer. On March 11, 2021, the Acting General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. On March 15, 2021, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively states that unless an answer is received on or before February 24, 2021, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the Acting General Counsel's motion disclose that the Region, by letter emailed on February 26, 2021, advised the Respondent that unless an answer was received by March 5, 2021, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations of the complaint to be admitted as true, and we grant the Acting General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a New Jersey corporation with an office and place of business in Linden, New Jersey, has been engaged in the provision of housekeeping and laundry services to health care facilities, including to Alaris Health at Hamilton Park and Alaris Health at the Atrium, located in Jersey City, New Jersey.

During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its business operations described above, purchased and received goods valued in excess of $50,000 directly from points located outside the State of New Jersey.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Brian Powers has held the position of the Respondent's vice president and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act.

The following employees of the Respondent constitute an appropriate unit (the unit) for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time laundry and housekeeping employees employed by the Respondent at Alaris Health at Hamilton Park and Alaris Health at the Atrium; but excluding all office clerical employees, watchmen, guards and supervisors, as defined in the Act.

At all material times, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from March 1, 2012 to June 30, 2016.

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About early June 2020, the Respondent bypassed the Union and unilaterally discontinued a 25-percent wage increase, which was implemented during the COVID-19 pandemic in April 2020, without first notifying the Union or providing the Union with an opportunity to bargain.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

The Respondent engaged in the conduct described above without the Union's consent.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act. The unfair labor practices of the Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent has been failing and refusing to bargain collectively with the Union as the exclusive collective-bargaining representative of the employees in the unit in violation of Section 8(a)(5) by bypassing the Union and unilaterally discontinuing a 25-percent wage increase, we shall order the Respondent to rescind the unlawful unilateral change implemented about early June 2020. We shall also order the Respondent to make the unit employees whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful direct dealings and unilateral change, such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). Further, we shall order the Respondent to compensate affected unit employees for any adverse tax consequences of receiving lump-sum backpay awards, and to file a report with the Acting Regional Director for Region 22 allocating the backpay awards to the appropriate calendar year(s) for each employee. *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016). In addition to the backpay-allocation report, we shall order the Respondent to file with the Acting Regional Director for Region 22 a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay award. *Cascades Containerboard Packaging*, 370 NLRB No. 76 (2021). Moreover, we shall order the Respondent to bargain with the Union as the exclusive collective-bargaining representative of the unit employees before implementing any changes in their wages, hours, or other terms and conditions of employment.

ORDER

The National Labor Relations Board orders that the Respondent, Confidence Management Systems, Jersey City, New Jersey, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with 1199 SEIU United Healthcare Workers East (the Union) as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) Changing the terms and conditions of employment of unit employees without first notifying the Union and providing the Union with an opportunity to bargain.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Before implementing any changes in wages, hours, and terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of employees in the following bargaining unit:

> All full-time and regular part-time laundry and housekeeping employees employed by the Respondent at Alaris Health at Hamilton Park and Alaris Health at the Atrium; but excluding all office clerical employees, watchmen, guards and supervisors, as defined in the Act.

(b) Rescind the change in the terms and conditions of employment for its unit employees that was unilaterally implemented about early June 2020.

(c) Make unit employees whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful direct dealings with the unit employees and unilateral changes implemented about early June 2020, in the manner set forth in the remedy section of this decision.

(d) Compensate unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Acting Regional Director for Region 22, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar year(s) for each employee.

(e) File with the Acting Regional Director for Region 22 a copy of each backpay recipient's corresponding W-2 form reflecting the backpay award,

(f) Preserve and, within 14 days of a request, or such additional time as the Acting Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form,

necessary to analyze the amount of backpay due under the terms of this Order.

(g) Post at the Alaris Health at Hamilton Park and Alaris Health at the Atrium facilities, Jersey City, New Jersey, copies of the attached notice marked "Appendix."[1] Copies of the notice, on forms provided by the Acting Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed either of the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 1, 2020.

(h) Within 21 days after service by the Region, file with the Acting Regional Director for Region 22 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 6, 2021

Marvin E. Kaplan, Member

William J. Emanuel, Member

John F. Ring, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively with 1199 SEIU United Healthcare Workers East (the Union), as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT change your terms and conditions of employment without first notifying the Union and giving it an opportunity to bargain.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following bargaining unit:

> All full-time and regular part-time laundry and housekeeping employees employed by us at Alaris Health at Hamilton Park and Alaris Health at the Atrium; but excluding all office clerical employees, watchmen, guards and supervisors, as defined in the Act.

WE WILL rescind the change in the terms and conditions of employment of our unit employees that was unilaterally implemented about early June 2020.

WE WILL make unit employees whole for any loss of earning and other benefits suffered as a result of our unlawful unilateral change in early June 2020, plus interest.

[1] If the facilities involved in these proceedings are open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facilities involved in these proceedings are closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facilities reopen and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL compensate unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Acting Regional Director for Region 22, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar year(s) for each employee.

WE WILL file with the Acting Regional Director for Region 22 a copy of each backpay recipient's corresponding W-2 form reflecting the backpay award.

CONFIDENCE MANAGEMENT SYSTEMS

The Board's decision can be found at www.nlrb.gov/case/22-CA-269243 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.